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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/180,477 02/05/99 MARZE

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022650-498

021839

HM22/0228

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EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

02/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

# Office Action Summary

Application No.

09/120477

Applicant(s)

MARZE

Examiner

MELLOY

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 1/23/01
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-96 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 12-82, 28 & 96 is/are rejected.
- ☒ Claim(s) 8394 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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Receipt is acknowledged of letters, CPA, Requests for Time, amendments, and response for missing parts (1/23/01).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12-23, 27-29, 33-38, 40, 42-47, 49, 51-55, 59-82, 95, and 96 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant argues the claims are fully supported by the specifications, but examiner reiterates, the rejection as presented is based on requirement for one in the art to require more information than provided, in order to meet the claim language. The claim to dwellings in particular, are not supported in any manner-NO size, shape, materials, structural constraints or intended use constraints are disclosed-nor are there any indications of novelty of the dwelling presented.

Claims 12-82, 95 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al 5747579 in view of JP 08108403, DE 2438365 and JP 00180462 and Morrow et al WO 97/47190.

The rejection of record is maintained.

Morrow shows construction of dwellings protected with ~~Tipronit~~<sup>Fipronil</sup>, applied as impregnated Films or covers (P.6, line 25). Materials can include paper (P.2, known to be used for insect protection; and would be usable in Morrow's invention), but are of concern as a termite food (p.4

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line 23-29). Thus, one of ordinary skill in the art of insect control of termites in dwellings, would find it obvious to choose construction materials for their known purpose, with use of Fipronil<sup>1</sup> as a termiticide, impregnated in a film, to be applied as desired.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize insecticidal protection of dwellings, to use Kodama's insecticide with application to cover building materials, shown as well known by the prior art. Morrow teaches one having ordinary skill in the art would be motivated to perform this modification in order to increase barrier efficacy. The particular % mix of active, is a function of the compatibility of these components with each other, while selection of active is a function of the efficacy against the particular pest to be treated.

The selection of each component is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the mature of each ingredient to optimize the effects desired.

There is no unusual and/or unexpected results obtained since the prior art is well aware of the use of compounds for enhancement and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

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Claims 83-94 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/Villalobos

February 20, 2001



NEIL S. LEVY  
PRIMARY EXAMINER